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WEDNESDAY, APRIL 10, 1878.

Railroad Bonds.

ST. CHARLES, Dec. 19, 1877.

Hon. L. H. Redman, Hassard, Ralls County, Mo.

Dear Sir: In response to yours of the 14th inst., I submit my views upon the subject therein discussed. I regret to learn that recent decisions referred to are almost universally ascribed to corrupt influences, altho' the rings of speculators, attorneys and brokers, who own three-fourths of the Missouri county bonds involved in litigation, shrewdly endeavor to suppress criticism by denouncing as "damned fools" all who dared to express a doubt concerning any ruling of a Federal court. I am not afraid to say that I believe there is scarcely a disinterested lawyer in the state who does not in his heart admit the injustice of the conclusions which have been reached in the cases referred to, still I would be derelict in my duty, both as a lawyer and a citizen, if, imitating the intemperate conduct of my opponents, I encouraged the opinion that judges who rule against us are necessarily either knaves or fools. I think the true explanation of many erroneous decisions lies in the fact that the overworked courts devote so much time to a few favored cases, both in the argument and consultation room, that it is impossible to afford in other cases the thorough investigation required. Profoundly as I respect the great judges who adjudicate bond cases, I do not think it just, either to themselves or to those whose interests depend upon their decisions, to presume that they are omniscient or infallible. When intricate questions of local law are involved, any respectable lawyer who has carefully prepared his case should be capable of enlightening upon that particular subject the ablest of jurists. If the contrary is true, the sooner the bar is abolished the better.

The United States Supreme Court rarely passes upon other issues than those made by the pleadings as they stand at the time of judgment in the Circuit Court. In bond cases there are numerous possible defenses, none very strong, but all worth setting up, which must be separately pleaded. It is the invariable policy of the opposing counsel to mutilate the defendant's answers by demurrers or motions to strike out. If these motions are sustained, the defendant's counsel are under the obnoxious laws now prevailing, compelled either to submit to judgment, and risk all on the portions of answer stricken out or to abandon them by amendment and ultimately reach the Supreme Court, with a verdict on less than half of their original defenses. For these reasons it is of the highest importance that ample time should be accorded for argument in the preliminary matters thus virtually disposed of in the lower courts. The majority of the bar who are aggrieved by the present unsatisfactory mode of reaching such motions should endeavor to obtain the enforcement of a rule that a law docket shall be called at stated intervals, allowing each litigant an equal opportunity of being heard orally, in regular order, according to date of motion, etc. The scores of modest lawyers, who during weeks of patient waiting for an ultimate hearing of twenty minutes duration, have been lulled to sleep by the whang-doodle tones of long-winded bores, invariably taking precedence of others with equally important business and consuming entire days in getting in their work, should erect a monument "more durable than brass" to the judges who inaugurate this much needed reform. I do not believe it either expedient or just for any man or community to avoid the payment of an honest debt. The six hundred thousand dollars of bonds and coupons for which Ralls and Lincoln counties are pursued with such malignant zeal, I do not regard as honest debts. No consideration has ever been received for these bonds. At a time when nine-tenths of the tax-payers were disfranchised, justices of the County Court, placed in office by the insignificant minority who could vote, or by appointment of governors elected by similar minorities, undertook, without any submission whatever to the people, now held responsible for their misdeeds, to issue bonds to a sham company (in undoubted defiance of organic and statute laws believed by the people, and originally asserted by the Supreme Court (39 M. R. 489), to be applicable) under the pretext that the corporation to which they were issued—the "St. Louis & Keokuk Railroad Company"—was chartered in 1857, and held a power under which as the Supreme Court of Missouri (41 M. R. 458) and of the United States 93 U. S. 572) practically declare the consent of those who are now required to pay debts was entirely unnecessary in creating them. The original bill incorporating the St. Louis & Keokuk Railroad Company has been *missing* for years from the proper office, but I hope soon to obtain evidence which may satisfy juries that the act never really became a law. If it did, that the power granted by said act had actually lapsed from failure to organize begin the transaction of business within the time required by relevant laws in force when the charter was granted. Conceding the correctness of the proposition that a county cannot deny the existence of a corporation to which its bonds are executed, I maintain that it was not the county but Justices of the County Court, without power so to do, who recognized the company in said bonds; in other words, that in 1868 and 1870 the County Court of Ralls and Lincoln counties, in so far as they attempted to bind Lincoln county or Ralls county by issuing bonds to the St. Louis & Keokuk Railroad Company, were acting like agents whose power of attorney had expired by limitation therein contained, and under which, for that reason, the principals could not be bound. The pretended order of subscription in Ralls county was made and $200,000 of the bonds signed by a gentleman who was neither *de jure* nor *de facto* a justice or president of the County Court, but was merely an ex-Judge of the Probate Court, whose office had virtually been abolished by act of March 24, 1868, but who, by virtue of said defunct office, claimed to be President of the County Court. I contend that the act of 1820 establishing Ralls county, and every subsequent revision of said act down to 1865 is void, because each of said acts violated the constitution of Missour. of 1820, by reducing the then existing county of Pike to less than twenty miles square, though said county of Pike retained an irregular shape (not twenty miles square), an area of over 400 square miles, and that the Revised Code of 1865 so designated Ralls as to violate the constitution of 1865 by reducing the then existing county of Pike to less than 500 square miles; for these reasons Ralls was at no time a legally constituted and duly organized county prior to the constitution of 1875, and therefore had no power to issue bonds. If the court holds that under the constitution of 1865 Ralls was a legally constituted county, it follows that upon mandamus from the same court to enforce its judgment it will be eminently proper for the Justices of the County Court of Ralls county to state in their return that they have, without avail, levied taxes upon Louisiana, Clarksville and all that part of Pike county actually included within the southern boundary of Ralls by the acts of 1855 and 1865, and that the inhabitants of said region stubbornly cling to the delusion that they still belong to Pike county, which with characteristic sagacity, never paid to either board of the St. Louis & Keokuk Railroad Company her subscription of $200,000 in county bonds to insure the building of that famous route. Before the constitution of 1875 was adopted, any power which existed under the charter of the St. Louis & Keokuk Railroad Company was repealed by act of March 30, 1872, and no subsequent act of the county authorities in paying interest, etc., could estop the county from denying the validity of bonds issued to said company in 1870. Prior to the constitution of 1875, at all events, under the laws of Missouri, a county was not a municipal or a private corporation, but a mere *quasi* corporation, with only such power and obligations as were expressly conferred and imposed upon it. I therefore contend that there being no act of congress or state law permitting process of a Federal court to be served upon the clerk of the County Court, as may be done in suits instituted in the Circuit Court of the county, it follows that counties are not properly brought within the jurisdiction of the United States Circuit Court by the kind of process which has for years been submitted to without question, and which would suffice as against municipal or private corporations. Of course we will be met in the Supreme Court of the United States, as in the Circuit Court, with the argument that a county of Missouri is a corporation composed of citizens of said state, and that the Federal courts, therefore, have no jurisdiction.

If the distinction between a *quasi* corporation and a complete corporation is disregarded, I shall still contend that the leading case of Aspinwall vs. Commissioners of Knox county, (21, How. 539), and subsequent cases do not control our cases, because, there the commissioners who *were sued* and *served* with process, were themselves a corporation under the laws of Indiana. The United States Circuit Court having recently, in the Franklin county case, held that the question of jurisdiction must be made at the outset by special plea and not at any stage of the case, or with other defenses, as under our state practice, which the Federal courts were required by the act of congress of 1872 to follow, "as far as may be," we will be forced to test this point in a separate case from those in which we wish first to set up other defenses, resting upon fraud or irregularity. So in the case of Wm. G. Douglass vs. Ralls county, wherein we have made the plea of *non est factum* is that the county never made the bonds at all. I have not deemed it advisable to plead failure to hold elections, etc., because the courts below would sustain demurrer, and we would either have to amend and abandon said defense or rest upon demurrer, and thereby abandon other defenses. I also contend, for reasons too lengthy for explanation here, that neither Ralls nor Lincoln had power to issue to the St. Louis and Keokuk railroad, county bonds bearing more than 7 per cent. under any circumstances. These are the chief points relied upon in pending cases. These are defenses hereafter to be presented which are not disclosed by the pleadings, and which it is not advisable to mention now. In two cases I have denied, as I advise shall be done in all subsequent cases that the plaintiff is a non-resident, or holder for value, and have set up that the coupons sued on really belong to Missouri brokers or lawyers. I have forced the plaintiff by his deposition in one case to admit the truth of such a defense. If in any way we can compel these vampires to accept justice before juries of the counties they are attempting to crush, the future will be full of hope. It is true that some of the bonds issued by Ralls and Lincoln counties are held by innocent purchasers entitled to respectful and kindly consideration, but if those whom I propose to examine before this contest ends do not try the hazardous experiment of blackening their souls with perjury I expect to establish the fact that over half the bonds and coupons issued by Ralls and Lincoln counties are owned to-day by a ring of powerful and unscrupulous citizens of Missouri, every member of which was a party or privy to the frauds and irregularities, which deprive said bonds of a shadow of a moral obligation. It is said that leaders of this ring boast that they have recently united with a so-called syndicate, in New York controlling four hundred millions of western and southern securities, not only thoroughly prepared to furnish non-resident plaintiffs and competent testimony in such quantity and quality as may be required, but proposing to get in its heaviest work by presenting to county courts, taxpayers' committees, legislatures, and even to opposing counsel, and doubtful, peculiarly engraved arguments, believed in Wall street to be unanswerably convincing. A great jurist of Iowa, years ago, predicted that the most dangerous assaults upon American liberty would develop themselves in the shape of abuses of the taxing power, inspired by maudlin sentimentality of the courts in assuming that commercial honor required payment of dishonest debts. To-day the Shah of Persia does not exercise a more cruel and relentless despotism than do certain rings of useless corrupt placemen and secret holders of fraudulent bonds in many counties in Missouri. Where they cannot buy and dare not openly attack, they conspire to undermine and secretly traduce those who stand in their way. Few men realize what desparate devices are persistently resorted to by those who are thus struggling to retain ill-gotten gains. The Spanish have a truthful adage, that "the resistance of honest owners against robbers is child's play compared with the efforts of rogues from whom restitution is sought." When the county courts and tax-payors' committees of Ralls and Lincoln offered to retain me, I told them that if there was to be any weakening of the knees, in view of the defeats, which porbably awaited us at the outset, they had better weld the bond holders' collars about their necks at once, but that if they would pledge themselves to resist until the courts of last resort relieved them, or enforced by judgments and writs of mandamus the claims of those who had notice of the fraud, and until innocent purchasers properly sharing the loss, offered to abandon half of their claims, I would undertake their defense. So long as the people comply with thier part of these contracts made by their agents, I shall endeavor to discharge my duty. How shall we conduct the fight? I answer, hoist the black flag, deny the quarter which no fraudulent bondholder is capable of granting. Fight over every square inch of ground if necessary for ten years to come. Pay nothing unless at the end of the law; deny everything in every suit brought, except in the test cases now pending. Force every plaintiff upon the witness stand to prove himself an innocent purchaser or to confess the contrary. Prosecute every witness who can be proven to have perjured himself. If judgments are obtained, appeal; if judgments are affirmed, resist again upon alternative mandamus; if peremptory mandamus is granted reproach not those county justices, who, wearied with strife, may happen to resign before receiving orders to make the levy. Temporary disorganization with liberty is preferable to order without it. If successors can be found for those who resign, and levies are made, never loose sight of the fact that so long as your representatives in congress, and the general assembly do their duty in preventing insidious legislation the Federal courts can, even upon peremptory mandamus, only order *county officers elected by the unfortunate victims of the bondholders* to carry out the ineffectual *state laws which now exist*. If all other defenses fail and non-resident speculators intrude upon united communities, and endeavor to purchase under tax levies attempted upon personal or real property, carefully avoid all violece, attend sales as witnesses rather than as bidders, and rely exclusively upon the remedies which the law then in force and a jury of the vicinage will afford any citizen who may be wronged. Finally, if suits are brought under the act of 1877 to enforce the railroad tax against each tract of land you have the glorious assurance that the cases must be tried in state courts before just juries. Let open tax-payers' leagues be established in every township; let every member be sworn to reduce the salaries or number of useless office-holders, and to defeat their natural allies—fraudulent bondholders. Let the leading men of each defaulting county unite in calling a state convention about the first of June, 1878, in order to insure, both in the courts and in elections, that concert of action in which lies the sole strength of the enemy. Such an organization will soon make its power felt, and actually hold the balance of power at the November election, securing then, or as opportunity may offer, a majority in the bodies which make state laws, sympathetic ministerial officers to enforce them, and fearless state judges, whose interpretation of local laws will harmonize with the common sense view of the people.

After the census of 1880 shall have given to the South and West the control of our national government, unless in the meanwhile the Republic is overthrown by Wall street, the Federal judiciary may be increased or remodeled, as was done with such marked success when the party then in power found it expedient to sustain the constitutionality of the legal-tender act in defiance of the opinion of the supreme court of the United States as then constituted.

Let the county courts and tax-payers' committees agree to accept offers of compromise not exceeding fifty cents on the dollar, from such really *innocent* bondholders as may, with satisfactory *affidavits* present their offers, before a day to be named. Let it be solemnly resolved that no man who does not offer such satisfactory affidavits, that he bought without notice of fraud, for value before maturity, shall ever get one cent with the consent of the people; and that he will have to swear upon that point in the suits which may be brought for him if not in a proposition for compromise, and we will soon separate the innocent bondholders from those who now use them as cats' paws to excite sympathy. Absurd as it may seem to you or to any citizen of Ralls, I assure you that there are brokers and lawyers who constantly assert that a majority of the people regard these bonds issued without a vote of the people, in the small hours of the morning, and clandestinely carried out of the county, as an *honest debt*, and actually hanker after an opportunity to pay them at par. Although we know that these assertions are utterly unfounded, yet in view of the fact that really innocent purchasers have been dissuaded by such pretense from seeking an honorable compromise, it is for the tax-payers' committee and the county court to consider the propriety of a formal denial of said falsehood.

Towards any bondholder who cannot show clean hands, every instinct of manhood requires "a war to the knife and the knife to the hilt." Taught by bitter experience that every dollar they extort from the people can be made to cost them in collection at the end of the law, ten times the amount of their accursed claims, the bad men who with notice took these bonds may yet find it advisable to apply them to an ignominious but exceedingly appropriate domestic use.

HENRY A. CUNNINGHAM.

The state school moneys for the present year have been apportioned. They are one-fourth the regular revenue fund of last year, $363,276; annual interest on the permanent school fund, $120,030, and interest on school certificates of indebtedness, $54,000; total, $537,306. This is the money distributed among the schools by the state. In addition the school districts are authorized to levy a tax not exceeding 40 cents on the $100 for the support of the local schools. As a rule this tax is levied up to the limit fixed, which on a state valuation of $600,000,000 would yield about $2,400,000. The whole sum expended for school purposes in Missouri this year, therefore, will be $2,937,000.—Republican.

Grant is the man alluded to by the Wisconsin senator as "that illustrious captain, who, always led his party to victory, and always lifted his country to renown." These victories and liftings very nearly wore this country out. Mr. Grant can continue his travels. The people of the Eastern continent can go on with their show and expend their admiration to the top of their bent. They can't fool us on Grant; we know him thoroughly